

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 27, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Robert Bartholomew, Vice-chairman  
Paul Schultz\*  
Mary Voelker  
Walter Tarmann

\*Note: Mr. Schultz arrived late, at approximately 6:45 p.m. He was not present for the first hearing (BA03:066 – Sprint PCS), but he was present for the remaining two hearings.

**BOARD MEMBERS ABSENT:** James Ward, Chairman

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Atty. Peter McCombs, BA03:066, representing the petitioner  
Keith Markano, Airport Manager, BA03:066  
James and Jane Taylor, BA03:076, petitioners  
Jason Puestow, BA03:076, neighbor  
Scott Phillips, BA03:076, neighbor  
Bruce Ambuel, BA03:073, petitioner  
Joyce Campbell, BA03:073, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of July 23, 2003.*

The motion was seconded by Mr. Schultz and carried with three yes votes. Ms. Voelker abstained because she was not present at that meeting.

**NEW BUSINESS:**

**BA03:066 SPRINT PCS**

Ms. Voelker *I move to hold this hearing in abeyance until the meeting of September 24, 2003. This will allow time to obtain additional engineering information and legal advice and for the Waukesha County Airport Commission to reconsider their recommendation.*

The motion was seconded by Mr. Tarmann and carried with three yes votes. Mr. Schultz was not

present for this hearing or for the vote.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested height variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. Self-created hardships or financial hardships are not justification for the granting of a variance. In addition, the Waukesha County Airport Commission has already reviewed this request once and recommended denial, apparently because they believe the existing cellular tower would be a hazard to navigation. It has not been demonstrated that the cellular communication tower is not a hazard to the safe, normal operation of aircraft. Therefore, it has not been demonstrated that it would be in the public interest to grant the requested variance from the Waukesha County Airport Height Limitation Zoning Ordinance, and that a literal enforcement of the Ordinance would result in an unnecessary hardship.

**BA03: 076 JAMES & JANE TAYLOR**

Note: Mr. Schultz was present for this hearing and for the subsequent hearing (BA03:073 - Bruce & Helen Ambuel).

Ms. Voelker *I move to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Mr. Schultz. A discussion ensued and Ms. Voelker revised her motion, as follows:

Ms. Voelker *I move to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report, with the Condition #11 modified to read, as follows*

*"No later than twelve months after the issuance of a zoning permit for the new residence, the non-conforming concrete patio at the lake shore must be cut back so that it extends no more than 3 ft. on the landward side of the seawall, unless it can be demonstrated that the seawall slab extends farther than 3 ft. from the lake before it narrows to a depth of approximately three to four inches, in which case the concrete patio shall be cut back to that point."*

The revised motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following modifications and conditions:

1. The proposed residence, patio, and deck, must be located in conformance with the minimum shore setback requirement, utilizing the shore setback averaging provision of the Ordinance. This will require the residence to be at least 39.9 ft. from the lake and the deck and patio to be at least 31.25 ft. from the lake.

2. The proposed residence and attached garage and the proposed deck and patio must be located in conformance with the offset requirements of the Ordinance. This will require the building to be at least 7 ft. from the side lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines as the overhangs exceed two (2) ft. in width. The proposed deck and patio must be at least 5 ft. from the side lot lines.
3. Any sidewalks, walkways, or stairs along the sides of the residence or leading to the lake shall be no more than 3 ft. wide and they must be at least 3 ft. from the side lot lines.
4. The proposed residence and attached garage may be located no closer to the road than indicated on the Plat of Survey submitted with the application (49.7 ft. from the centerline of the road right-of-way), as measured to the outer edge of the wall, provided the overhang does not exceed two (2) ft. in width. If the overhang exceeds two (2) ft. in width, the building must be located the additional distance from the road as the overhang exceeds two (2) ft. in width.
5. The proposed residence must be reduced in size so that the total floor area, including the first and second floors of the residence and the attached garage, but not any finished living area in the exposed basement, does not exceed 2,200 sq. ft. The first floor of the residence must be at least 850 sq. ft., but not more than 1,000 sq. ft. The residence must conform with the minimum required house size, which is 1,100 sq. ft. for homes with at least 300 sq. ft. of unfinished basement area or 1,300 sq. ft. for homes without at least 300 sq. ft. of unfinished basement area. Finished living area in the exposed basement may be included as floor area for the purpose of meeting the minimum required house size. The residence must have an attached garage of at least 400 sq. ft. This will result in a maximum floor area ratio of 34.7%.
6. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a zoning permit, a Plat of Survey, showing the location of the proposed residence, attached garage, deck, and patio in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 7.
9. Prior to the issuance of a zoning permit for the new residence, the non-conforming shed near the lake must be removed from the property.

10. No later than twelve months after the issuance of a zoning permit for the new residence, the non-conforming detached garage must be removed from the property.
11. No later than twelve months after the issuance of a zoning permit for the new residence, the non-conforming concrete patio at the lake shore must be cut back so that it extends no more than 3 ft. on the landward side of the seawall.
12. Prior to the issuance of a zoning permit for the new residence, a landscaping and restoration plan for the lake shore and the area where the retaining walls will be removed must be submitted to the Planning and Zoning Division staff for review and approval. If the restoration plan calls for removal of the concrete seawall and the placement of rock riprap along the shore, the necessary permits from the Wisconsin Department of Natural Resources (DNR) and the Waukesha County Department of Parks and Land Use must be secured, prior to the commencement of that work.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Due to the shallow lot depth, a hardship exists and a road setback variance is necessary to locate a reasonably-sized residence and attached garage on this lot, in conformance with the shore setback requirement. Granting the requested road setback variance is not contrary to the public interest and will not result in a safety hazard. A hardship also exists with respect to the floor area ratio and open space requirements. Conformance with the maximum permitted floor area ratio of 19.5% would permit a residence and garage of only 1,234 sq. ft. Even with a minimally-sized two-car garage of 20 ft. x 20 ft., this would allow only 834 sq. ft. for the residence, which would not conform with the minimum required first floor area of 850 sq. ft. Given that the total lot area is only 6,332 sq. ft., it is impossible to conform with the minimum open space requirement of 7,000 sq. ft. It is felt, however, that the proposed residence and attached garage are too large for this small lot, and that the approval of this request, with the recommended modifications and conditions, will result in a new residence, similar in size to the existing residence, which is appropriately-sized for the lot. Finally, the approval of this request, with the recommended conditions, will eliminate two extremely non-conforming buildings (the detached garage and the shed near the lake), as well as the non-conforming deck and patio near the lake. Therefore, the approval of this request, with the recommended modifications and conditions, is in conformance with the purpose and intent of the Ordinance.

**BA03:073 BRUCE & HELEN AMBUEL**

Mr. Tarmann

*I move to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report, with the following additional conditions:*

*Condition #3: The asphalt driveway leading to the boathouse shall be terminated near the bottom of the slope, in the vicinity of the northern terminus of the existing retaining wall, and the area from that point towards the lake shall be restored with grass or other natural vegetation. Detailed grading and drainage plans for the grading to be done with respect to the alterations to that driveway and for the landscaping to be done in conjunction with the*

*restoration of that area, must be prepared by a registered landscape architect, and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure that there will be no adverse drainage onto the adjacent property. The intent is that the property be graded and the driveway modified according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring property. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of any fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.*

Condition #4: *The height of the boathouse must conform with the plans submitted with the application, which indicate a roof height of 12 ft., as measured to the peak.*

The motion was seconded by Ms. Voelker and carried with three yes votes. Mr. Schultz voted no.

The staff's recommendation was for approval, with the following conditions:

1. The overhang on the sides of the boathouse shall not exceed 1 ft. in width.
2. The non-conforming patio on the east side of the boathouse must be removed and the area restored with grass or other vegetation, within one-year of the issuance of a zoning permit to repair and remodel the boathouse.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

A hardship exists because the existing boathouse is a substantial structure, on a concrete foundation, which cannot be easily moved to a conforming location. Although the boathouse is in need of repairs, it does not appear to be in such bad condition that without the variance it would be removed in the near future. Removing the existing boathouse and replacing it with a new boathouse in a conforming location would needlessly disturb the environmentally sensitive area near the lake shore and could result in the loss of mature trees. With the removal of the sloped overhanging portion of the side walls, the boathouse will be located 4 ft. from the west lot line, which will allow sufficient room for maintenance. The boathouse is effectively screened from the adjacent lot by a line of mature trees and its continued existence does not adversely affect the adjacent property owners or the lake and is not contrary to the public interest. Finally, the approval of this request, with the recommended conditions, will result in the removal of the non-conforming patio near the lake. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

**BA03:067 ALLEN & LISA MIES (request for reconsideration of decision of July 23, 2003)**

It was determined by the chairman that it would not be appropriate to reconsider the decision made on July 23, 2003. Therefore, this matter was not discussed.

**VARIANCE DECISION SHEET**

Since the chairman was not present, this item was tabled until the next meeting of September 10, 2003.

**ADJOURNMENT:**

Ms. Voelker *I make a motion to adjourn this meeting at 8:28 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment